

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

ANTONIO ALEJANDRO GUTIERREZ,

No. 03:08-CV-464-JE

Petitioner,

ORDER

v.

BRIAN BELLEQUE, Superintendent
of Oregon State Penitentiary, OREGON
BOARD OF PAROLE AND POST-PRISON
SUPERVISION, and STATE OF OREGON,

Respondents.

Antonio Alejandro Gutierrez, Pro Se
Snake River Correctional Institution
777 Stanton Blvd
Ontario, OR 97914

Attorney for Petitioner

Andrew D. Hallman
Oregon Department of Justice
1162 Court Street, NE
Salem, OR 97301

Attorney for Respondents

HERNANDEZ, District Judge:

Magistrate Judge John Jelderks issued a Findings and Recommendation (#69) on June 7, 2011, in which he recommends that this Court should deny the Petition for Writ of Habeas Corpus and a judgment should be entered dismissing this case with prejudice. Judge Jelderks also recommends that the Court should decline to issue a Certificate of Appealability on the basis that petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2). Plaintiff Gutierrez timely filed objections to the Findings and Recommendation. The matter is now before me pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1); Dawson v. Marshall, 561 F.3d 930, 932 (9th Cir. 2009); United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).

I have carefully considered Plaintiff Gutierrez's objections and conclude that the objections do not provide a basis to modify the Findings and Recommendation. I have also reviewed the pertinent portions of the record *de novo* and find no error in the Magistrate Judge's Findings and Recommendation.

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CONCLUSION

The Court ADOPTS Magistrate Judge Jelderks Findings and Recommendation (#69). Accordingly, the Petition for Writ of Habeas Corpus is denied and judgment is entered dismissing this case with prejudice. A Certificate of Appealability will not issue because petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

DATED this 29th day of July, 2011.

/s/ Marco Hernandez
MARCO HERNANDEZ
United States District Judge